

IN THE MATTER OF AN ARBITRATION

BETWEEN:

FINLAY FOREST INDUSTRIES LTD.
(The Company)

AND:

IWA - CANADA - LOCAL 1-424
(The Union)

CONCERNING THE GRIEVANCE OF
JARNAIL KAILA & JAGTAR DEOL

Arbitrator
Company Counsel
Union Counsel
Date of Hearing
Date of Award

Alex Brokenshire
Mary E. Saunders
Robert B. Blasina
October 6, 1988
November 2, 1988

This Arbitration was held in Mackenzie, B.C. at the Alexander Mackenzie Hotel.

It was agreed that the Board was properly constituted and had jurisdiction to hear and rule on the matter in dispute.

The questions that evolved from evidence and argument and therefore are before this Arbitration Board are:

- 1) Did the Company breach "Article XVI, Section 5" of the Collective Agreement between the Company and the Union on March 28, 29 and 30, 1988?
- 2) If the answer to Question 1 is "yes", what is the appropriate remedy.

Witnesses were called, sworn and examined.

BACKGROUND

Union Counsel, in an opening statement, said that the area of the Mill wherein the incidents that gave rise to the grievance occurred could be described as that which is situated after the planer and composed of the grading table, tower and dry chain. The lumber passes through four operating stations. Each of these is operated by a person who is a qualified grader.

The stations are designated by numbers 1 to 4. Lumber proceeding through the conveying system is first handled at #1 station where that grader acts as a trimmerman. He saws the boards to the lengths that are most suitable for recovery and other requirements. The lumber continues over the grading table to #2 and #3 stations. Each of the stations is equipped with controls centralized in a console. The graders visually and physically ascertain the grade of each board and by pressing the appropriate button on the console each board is automatically stamped with its grade and is deposited in a tray reserved for that specific grade. The contents of these trays are finally carried to the shipping area. By the time stations #1, #2 and #3 have done their grading the residue on the grading table consists of economy grade and other boards that have not been stamped and consigned to trays. This lumber travels up an incline on a conveyor chain to the elevation called the tower, thence over a camel back and onto the dry chain. In regular operating circumstances there is some recovery of higher grade lumber from the economy grade flow. #4 grading station is responsible for the operation of the designated functions of the dry chain.

The #4 station was not computerized until the summer of 1988. Therefore, at the time this grievance was processed #4 station and the dry chain were not automated as were the other three stations. The stamping and pulling of lumber was done manually.

In February of 1988 the Company accessed a market in Japan for a particular grade of wood. This is referred to as "J" grade.

The boards that met specifications for "J" grade were directed from #3 station to #4 station where the grader usually selected the "J" grade boards, checked the moisture content to see that it did not exceed 15 percent and if these specifications

were met he hand stamped that piece of wood as "J" grade. This was then manually pulled as it progressed along the dry chain.

Counsel stated that the crew size was made up of a grader at each station for a total of four. When "J" grade was being run an additional person was utilized on the dry chain as a lumber/puller. At times this number was increased by the use of a second lumber/puller.

At the time of this grievance, March 28, 29 and 30, two shifts were working. These were designated as "A" shift and "B" shift.

Four graders were attached to each shift and were normally placed at grading stations 1, 2, 3 and 4. The graders names on "A" shift which is the shift whereon the Union contends the Agreement was breached were: Keith MacDonald, Jagjit Bhullar, Dan Drazdoff and Daljit Bhullar. The regular foreman on that shift was a man named Nural Kaila. On March 28, 29 and 30, 1988, Mr. Kaila was absent from the Mill because of being on vacation. Grader, Keith MacDonald was also vacationing at that time.

Gurmail Bassi, a Grader Trainee was employed in the #4 station/dry chain area on March 28, 29 and 30, 1988. With Nural Kaila being on vacation, Robert Blair, who's regular job was Quality Control Supervisor, was assigned the responsibility of Relief Foreman.

It is the Union's contention that the three regular graders were placed on stations #1, #2 and #3 and that Robert Blair, who is not a member of the Bargaining Unit acted as a grader at #4 station for eight hours on March 28, eight hours on March 29 and for six hours on March 30, 1988. The Union contends that this action is a breach of Article XVI, Section 5 of the Collective Agreement. The Union further contended that Gurmail Bassi, the Grader Trainee, acted as a lumber/puller and was not present for the purpose of instruction by Robert Blair.

The grievors are Jarnail Kaila and Jagtar Deol. They, along with people named Jim Shook and Rod Dixon are the four graders on "B" shift.

In their grievance, Mr. Kail and Mr. Deol claim that one of them should have been called in to fill the vacancy caused by Keith MacDonald going on vacation. They ask that they be compensated accordingly.

Company Counsel explained the Company's position by saying the Agreement had not been broken. It provides for instruction being given by management people and this is what Mr. Blair did. The introduction of the new "J" grade made it necessary to take special care so that the market possibilities would be enhanced. As Quality Control Supervisor it was Robert Blair's responsibility to spend time with each grader to ensure that the grade was being maintained. In the case of Gurmail Bassi more instructional and checking time was required because of Mr. Bassi's trainee status. The Company has operated at other times with three graders on shift and was not required to have a fourth grader on shift during the time under question. No lay-offs took place and no wages were lost. The Company contended there were no damages generated.

UNION EVIDENCE

The first Union witness was one of the Grievors, Jarnail Kaila. He started in the Mill in 1984 working at lower level jobs. In December 1984 or January 1985 he became a grader trainee, got his graders ticket later in 1985 and after further Company training became a grader.

He had obtained a Council of Forest Industries (C.O.F.I.) grading ticket at grading classes. (This Mill as do many others who utilize graders with C.O.F.I. grading tickets, are provided with the use of a C.O.F.I. lumber stamp. This stamp when applied to lumber is an assurance to the buyer that grading standards have been met.)

In this Mill the Company has a programme of further "on the job" training that must be successfully completed before the Grader Trainee is recognized as a Qualified Grader. The Witness said that he received this training by spending one week with a grader. After watching for the first one or two days the trainee then learns how to flip and study boards and also how to push the proper buttons on the console. He is tested at the end of the week by grading one hundred boards by himself.

If he is successful in grading correctly seventy of the hundred boards his training continues by working at the grading stations under the observation and advisement of the grader at that station. The Witness said that "J" grade was first made in February 1988. The graders were instructed as to what the allowances were for wane, rot, warp, compression knots, etc. A chart was provided. This instruction was given by the foreman, (maybe Robert Blair) and took a short time, five minutes or there about.

One other condition that had to be measured was the moisture content of the boards that the grader at #4 station was stamping as "J" grade. The maximum moisture allowance was 15 percent. After being instructed on "J" grade requirements each grader worked at #4 station for fifteen or twenty minutes to see if they had the feel of things.

Mr. Kaila told the Board that when "J" grade is not being run there is a grader at each of the four grading stations. At #4 station the grader both grades and pulls lumber. The amount of lumber to be graded is less when there is no "J" grade being run. The function becomes one of a "final grade" with some recovery of grade being made from the flow of Economy lumber. The graders rotate through the four stations on two hour intervals.

"J" grade was run sporadically on the non automated dry chain from February 1988 to some time that summer at which time the operation was computerized.

This Witness said that during that period of time and when "J" grade was being run the crew consisted of a grader at each of the four stations plus a puller on the dry chain. If more help was needed to handle the flow on the dry chain a signal light was put on and additional help was provided. He further said that the puller did not grade, that was the province of the grader at #4 station. It was this Witnesses' evidence that grader trainees spent time at all stations but most of their learning took place at #3 station.

Mr. Kaila testified that on March 28, 29 and 30 he was working as one of four graders on "B" shift. "J" grade was being run and there was a grader at all four stations plus a puller on the dry chain. He did not know the name of that person.

During cross examination the Witness could not recall who was the puller on the three days in March. He said it could have been different people on different days. He was firm in his assertion that a second person was required at #4 station and the dry chain when "J" grade was run. He agreed with Company Counsel that Robert Blair, acting as Quality Control Supervisor, would check loads to see that standards were maintained. He also, at times, would pull a board and show the grader what was wrong if things were getting too far off grade. When asked, the Witness said he was available for overtime work on those March dates and would have worked if asked. The second Union witness was the other grievor Jagtar Deol. He has been employed at the Mill since 1981 and became a Qualified Grader in July 1986. He explained the training process and it was substantially the same as told by Jarnail Kaila. He stated he was on "B" shift on March 28, 29 and 30, 1988. "J" grade was being run and he supported the previous testimony by saying that there was a puller on the dry chain in addition to the grader at #4 station. He too could not identify by name who the puller was. He did not think it was the same person at all times. He agreed with Company Counsel that if there were only three graders they would be at stations #1, #2 and #3. And also from time to time grader trainees have worked without observance from a grader. This Witness also said he was available for work on those March dates and would have worked overtime if asked. The next witness for the Union, Gurmail Bassi started full time employment at the Mill in June of 1987. After working on entry type jobs and attending grading classes he obtained his C.O.F.I. ticket in February 1988. On March 7, 1988 he was the successful applicant on a Job Posting for a Grader Trainee. He received training in conformity with the Company programme and was qualified as a Dressed Lumber Grader on May 2, 1988.

During his training time he was at #3 station more than the others. He did go to #4 to observe loads but had received no training when "J" grade was being run. He also said he received no training on "J" grade on the shifts of March 28, 29 and 30, 1988. He said that he had acted as the Puller for the full shift on March 28 and 29 and for six hours on March 30.

The Witness testified that on those days Robert Blair, the Relief Foreman had done all grading at #4 station. This included stamping the "J" grade lumber. He further stated that he had done the lumber pulling and had received no instruction as to how to grade from Robert Blair at that time. Jagjit Bhullar, Daljit

Bhullar and Dan Drazdoff were the three regular graders on shift. They did not follow the regular two hour rotation system. They rotated through stations #1, #2 and #3 but did not do so through #4 station as would have been done if the other regular grader, Keith MacDonald, had been working. The Witness said that Robert Blair had spent most of the shifts grading, stamping, measuring for moisture and a bit of pulling from the first chain. He testified that Mr. Blair did not teach him anything regarding moisture testing or stamping or anything else pertaining to grading "J" grade. He further stated that the Relief Foreman only left the grading station when production was down. At those times he would leave to ascertain why there was no production.

He told the Board that some time about the time he was qualified as a grader Nural Kaila had instructed him on the grading standards for "J" grade. When being cross examined the Witness said that when Foreman Kaila trained he went through the chart showing the requirements, would pull a couple of boards off the chain to show what to look for and also he would check the pulled loads to make sure the grade was correct. If there were deviations from standards these were shown to the grader trainee.

He told Company Counsel that on Thursday, March 31 and Friday, April 1 no "J" grade was produced. His job for those days was pulling random lengths from the dry chain. He was quite sure that he had done so on both days. When it was pointed out that April 1 was the Good Friday Statutory Holiday, he could not explain why he had thought he had worked that day. When asked why he had complained about being confined to pulling lumber and not getting grading training he reiterated that he had been told by Robert Blair that his grading training would be recommenced when Keith MacDonald returned. He further said that on the days in question he was not qualified to grade "J" grade as he did not have the ability to recognize the difference between that higher grade and economy. Company Counsel asked the Witness if he had been instructed by Robert Blair while attending the grading classes that had enabled him to get his C.O.F.I. grading ticket. The answer given was that he had seen him there a few times but he had been instructed by another person. Counsel suggested that Mr. Blair has instructed at 36 of 40 classes and in as much as the Witness had attended eight or nine of these he must have been in Robert Blair's presence a number of times. The Witness did not recall that frequency of contact.

The Union next called Jagjit Bhullar who was one of the regular graders on "A" shift and who was working on March 28, 29 and 30, 1988. He testified that he and the other two regular graders on shift manned grading stations #1, #2 and #3 and rotated through those stations. Robert Blair was at #4 station at the dry chain. He was stamping "J" grade. He said that this was done for "probably more than seven of the eight shift hours on March 28 and about the same on March 29. Again on March 30 he did the stamping for most of the six hours that "J" grade was run". He saw Gurmail Bassi pulling lumber and did not see him doing any stamping.

He agreed when cross examined that he could not see #4 grading station or Robert Blair at all times as he rotated between #1, #2 and #3 stations. He thought it was wrong to have Robert Blair stamping and had phoned Foreman Nurmail Kaila about it a few days later.

COMPANY EVIDENCE

Nurmail Kaila who is a foreman with supervisory responsibilities for areas of the sawmill including the Planer and the Grading Stations was the first Company witness. He recalled the introduction of "J" grade and the familiarization with its standards provided to the graders by him and Robert Blair. A chart showing the requirements was explained. This took about thirty to forty minutes to complete. He thought each grader was instructed separately within that time period. A period of time was then allowed to provide an opportunity to the graders to think about the new specifications and to ask questions if they wished to so do. A new market was being established and a close check was maintained to make sure there were no mistakes made.

Further instruction was given at the grading stations. He had done some grading, moisture testing and a small amount of stamping to illustrate what should be done. He said that there were times when a foreman must turn a board to show the graders what was needed. He had instructed the graders on "J" grade at different times on more than one day. The importance of the new market made it necessary for him to spend quite a bit of time with the graders. He also said a foreman might lend a hand pulling from the dry chain if things got behind. He commented, when asked, that the difference between "J" grade and economy grade was easy to discern. He likened it to

a dollar bill and a dime". He further said that high grade #2 and better was directed to #4 station when "J" grade was being run. In cross examination the Witness told the board that if during normal mill runs there were only three graders on shift #4 station would be the one left without a grader.

He said that when "J" grade was being run there must be four graders. Someone must be grading at #4 station. He further said that no one qualifies for "J" grade as such.

He testified that normally regular graders do the grading and if there is a person short on shift the foreman has the ability to call someone in to fill the vacancy. He can do this after other possibilities are exhausted and without reference or clearance by any other member of management. The overtime figures are reviewed every two weeks. Excessive use could be questioned.

When asked if there must be a qualified grader at #4 station when "J" grade was running he replied there must be someone there who could do the grading. He was of the opinion that in March people capable of grading were the regular graders, Robert Blair, himself and that Gurmail Bassi could do the dry chain pulling. He had received some training in overall grading. He further said that as a foreman he was precluded from doing grading by terms of the Agreement except for instructional purposes or to help if things were piling up.

He further told the Board that usually there were four graders and one puller when "J" grade was on. When questioned as to whether there always was a grader and a puller on "J" grade he replied "not always - yes, most of the time". These two people help each other by the grader doing some pulling as required but the puller did not do grading.

Robert Blair, the Company's second witness confirmed that he was Relief Foreman and also retained his responsibilities for quality control on March 28, 29 and 30, 1988. He has been with the Company since 1986 and has held a Grader's Ticket since 1981. He now teaches grading classes in Mackenzie when they are being intermittently held. He had taught Gurmail Bassi at some of these classes and had seen him there at other times. Each class participant is provided with the opportunity to

attend ten sessions on a voluntary basis. However, it is Mandatory that a passing mark be met before a C.O.F.I. ticket is issued. If the passing mark is 75%-80% a "B" ticket is issued if it is over 80% an "A" ticket is issued. Mr. Bassi received a C.O.F.I. ticket with a 77% mark.

The Witness outlined the Company's grader's training programme and the outline was substantially the same as that given by other witnesses. He said that both oral and illustrative training were given. While working together with a grader trainee, a supervisor, would at time while talking, pull some pieces of lumber and explain and discuss the requirements. The Witness said that the Company was very dedicated to producing the highest possible quality product and illustrated this by using up to date technology and providing good working conditions. It was also the Company's policy to give good training to the people doing a job so that high standards are maintained. It was the supervisor's responsibility to "look over the operators shoulder and advise". In the case of "J" grade, a high and consistant standard was required to solidify a new market.

When the new grade was introduced in February each grader was spoken with then the Witness pulled a few board of illustration purposes. Quite a bit of time was spent with each grader at the dry chain.

Gurmail Bassi was not instructed at that time.

He confirmed that there were three graders on "A" shift on March 28, 29 and 30. Mr. Bassi was put on the dry chain so he could learn the "J" grade. He was told what lumber was to go into packages. All he had to do was recognize the difference between "J" grade and economy. That difference was as distinct as "garbage and gold".

He further said that in fact grading of the lumber was done before it reached #4 station so no one actually graded at that point. He testified that both he and Gurmail Bassi did stamping and moisture testing. He disagreed with Mr. Bassi's statement that he had only pulled lumber.

He stated that on the three days in question he had not kept track of the time he spent on #4 station and the exit chain but it "was no more than one half of

the time". He had other places to supervise and paper work to do. There was not much "J" grade in the flow on those days so no third person was required.

He said that no regular grader was available on shift as one was on vacation. It was not necessary to call a grader in because Gurmail Bassi was a grader. He had been successful on his company test on one hundred boards. This qualified him for further company training.

Under cross examination, the Witness said that lumber to #4 station could contain "J" grade, economy, and upper quality of #1 and #2 grades. He said that it took the graders about three weeks to "get up to speed" at #4 station and also said that the person on #4 station provided the final grade step of the lumber as it passed by.

He agreed with Union Counsel that he could have placed Bassi on #1 station and could then have utilized the grader on #4 station. He further testified that the lumber pulled from the dry chain was placed in "no more than eight piles". He also agreed when questioned that Bassi by March 28 had shown that he was capable of more training to meet Company standards.

Union Counsel suggested that Mr. Blair's testimony showed that he had worked and then asked if he had not thought of any problems that might arise therefrom. Mr. Blair replied by saying he didn't place any significance on it until the complaint was lodged.

He was then asked if he was aware of the terms of the Contract. The reply was that he didn't keep his head in the Contract and had not considered it. He has now read the section on "working Foreman" and it says work can be done for purposes of instruction and it was his belief that the work that he had done was instructional as Bassi could see how he did it and could learn by that.

The Witness said that Gurmail Bassi did observe but actually did most of the grading and then the grades were checked by Blair. Mr. Blair agreed with Union Counsel when it was suggested Mr. Bassi was not qualified by the Company until May 2, 1988.

Fred Bray, Operations Manager, Site 2 was the Company's final Witness.

He gave a comprehensive review of the circumstance which led to the establishment of the "J" grade. Analysis had established that ten to twenty percent of the Mill's production could meet the required standards for that grade. The Company has other customers so it was not deemed wise to take upper grades out if the residue was affected adversely thereby. It was therefore decided that the amount put into "J" grade would be relatively small. He illustrated the small amount of "J" grade produced on March 28, 29 and 30 by producing figures which showed a total of "J" grade pieces pulled to be 442.

He further explained that Quality Control Inspectors maintain regular checks of production to make sure standards are met.

The grader at #4 station was instituted about three years ago. It is desirable to have him there but not absolutely essential. The grader training function can be carried out by a number of qualified management people who understand the methods of providing the standards required by the Mill.

It was this Witnesses submission that the normal crew for #4 station and dry chain was a grader, qualified or not qualified, and a clean-up person if required. It was his opinion that only a grader was needed on the days in question. He had not observed Mr. Blair's activities on those days so could not say with surety if he had gone beyond the bounds of instruction.

UNION ARGUMENT

Mr. Blasina for the Union argued that the issue in the case is well defined. The Contract does not allow for bargaining unit work to be done by non bargaining unit people except in very clearly defined circumstances. The Union recognizes that in a sawmill there must be some give and take and is not in any way trying to change that fact. He said that evidence shows that Mr. Blair had been grading and pulling lumber. This is normally done by bargaining unit employees. The second part of Article XVI, Section 5 sets out the exception wherein a foreman can do such

work. These exceptions are narrow and well defined. The work done by Mr. Blair does not fall within these exceptions.

The Grievors, Mr. Kaila and Mr. Deol both testified that they were graders on the other shift and if called by the Company they were available and would have worked in the vacationing Mr. MacDonald's place.

Gurmail Bassi, the grader trainee who worked with Robert Blair has testified that he did not receive training during the days in question. Mr. Blair spent a lot of time at #4 station and this was done because a special grade run was in process.

He argued that Mr. Blair's evidence is contradictory to two Union Witnesses who have nothing to personally gain. Therefore the evidence of Mr. Bassi and Mr. Bhullar should be preferred. He further argued that both Bassi and Blair had said that when Bassi complained to Blair that his grader training was being interrupted he was told by Blair that it would be restarted when Keith MacDonald got back from vacation. Evidence also showed that four graders were required when "J" grade was being run. Mr. Blair simply assumed the position of the missing grader and thereby breached the Agreement.

Mr. Blasina said that to right this wrong a declaration of contract violation is not enough. In this case someone in the bargaining unit should have worked as a grader so someone should be paid. Mr. Bassi was not qualified, this is shown in the Company's records. Someone from the opposite shift should be paid. The Union does not contend that overtime must be paid in accordance with seniority so it would be proper to award each of the two grievors half of the money that would have been paid to a grader on March 28, 29 and 30, 1988.

An alternative to this could be to award the Union that amount of money for the damages it has suffered by the breach of the Agreement. Such an order would reinforce the terms of the Collective Agreement.

Mr. Blasina provided a Brief of Authorities for the Board's perusal.

COMPANY ARGUMENT

Company Counsel argued that Mr. Blair had given evidence that carried credibility. He said that he was providing training to Mr. Bassi. It is the responsibility of the Quality Control Supervisor to make sure trainees received adequate instruction to prepare them to be competent graders. This instruction is sometimes delegated to experienced graders. However, evidence shows that management people do instruct by doing and showing in the work areas.

Management's job is a solitary job and Mr. Blair is in that position while giving his testimony. Therefore the Board must consider the credibility of the Witnesses.

Council contended that Mr. Blair had been very credible. He had said that Mr. Bassi had shared the stamping and moisture testing with him. This experience under Mr. Blair's observation had provided Mr. Bassi the opportunity of learning the requirements of grading for "J" grade. Mr. Blair had also testified that he had other duties to perform and when he was doing them Mr. Bassi did what was required at the work station.

Counsel invited the Arbitrator to discount the evidence of Mr. Bhullar when he said that Mr. Blair had spent seven of eight hours at #4 station on March 28 and 29 and the same proportion on March 30. She said that Mr. Bhullar, as he rotated between #1, #2 and #3 stations could not always see who was at #4. Mr. Bassi had testified that he had received no training and had acted only as the lumber puller. He also said that Mr. Blair had not left the work area except during times when Planer production was down. This, Counsel argued is not a believable statement.

Counsel argued that it was logical to place Mr. Bassi at that work area. It was where the flow of lumber was smallest. He did have a C.O.F.I. grading ticket and had passed the "100 board test", he was not a novice. The circumstances on the days in question gave Mr. Blair some time to teach him about "J" grade and also to check his work.

It is not reasonable to believe that he would not utilize this opportunity

to instruct Mr. Bassi on such things as moisture content, stamping and quality requirements.

Nurmail Kaila, Mill Foreman, had testified that Management people are at times required to turn lumber while instructing. It also should be noted that Mr. Deel had testified that he had done some grading on his own when he was a grader trainee.

Counsel said that when the credibility of the Witnesses was assessed the Board should deny the grievance. In the event that this is not done no damages should be awarded. No one complained to Mr. Blair on those days in March. If this had happened he could have turned over more to Mr. Bassi. Mr. Blair clearly thought Mr. Bassi could do the job.

Company Counsel also supplied a Brief of Authorities.

CONSIDERATION OF EVIDENCE AND ARGUMENT

The Union contends that on March 28, 29 and 30, 1988 Mr. Robert Blair, Quality Control Supervisor and on those days a Relief Foreman breached "Article XVI, Section 5: Working Foreman". This Article and Section are found at pages 39 and 40 of the Agreement between Finlay Forest Industries Ltd. and IWA-Canada, Local 1-424, and were in force from July 1, 1986 to June 30, 1988. It is grieved that Mr. Blair committed this breach of contract by doing work normally done by employees within the Bargaining Unit when he performed Grader's work. The grader's work was done not for purposes of instruction and there was not an emergency when regular employees were not available.

The Company's position is that any work done by Mr. Blair on those days was for purposes of instruction and therefore no breach of the Agreement occurred.

The positions of the Parties are clear. The resolution of the matter must be decided by this Board by assessing the evidence and then relating that

assessment to the wording of the Agreement.

Part 6, Section 92, of the Industrial Relations Act instructs Arbitrators of certain things that they must observe. Paragraphs 2 and 3 read as follows:

- (2) "It is the intent and purpose of this Part to constitute method and procedure for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.
- (3) An arbitration board, to further the intent and purpose expressed in subsection (2), shall have regard to the real substance of the matter in dispute and the respective merits of the positions of the parties to it under the terms of the collective agreement, and shall apply principles consistent with the industrial relations policy of this Act, and is not bound by a strict legal interpretation of the issue in dispute."

The underlining in mine.

The part of the Collective Agreement that is pertinent to this arbitration is and reads as follows:

"Employees outside the bargaining unit will not perform work that is normally done by employees in the bargaining unit.

However, nothing in this Agreement shall be construed as prohibiting foremen from doing work for the purposes of instruction, provided by so doing a lay off of bargaining unit employees does not result, or in the case of an emergency when regular employees are not available, provided that every reasonable effort is made to find a replacement."

This is a clause that is clear in its wording. It is also a very important clause to both bargaining unit employees and management. It gives bargaining unit employees full protection against foremen doing work normally done by them and at the same time it provides management with the ability to cover jobs in emergency situations and to do work for instructional purposes. Foremen's rights to work in emergent circumstances and for instructional purposes are subject to certain contractual qualifications.

To zero in on the central issue in this case I will first dispose of the matter of whether or not an emergency existed on the subject days.

Neither the Company or the Union say that there was an emergency. The absence of such a claim by the parties concerned does not relieve me of the clause of the Agreement in its entirety. In the evidence produced before this Board I do not find any reason to consider that there was an emergency. Therefore it is not necessary to look at the contractual qualifications as to the availability of regular employees or if every reasonable effort was made to find a replacement as stated in the Contract when an emergency does exist. The Union and the Company both recognize that a foreman, in this case Robert Blair, performed work that normally is done by employees in the bargaining unit. This leaves one condition of Article XVI, Section 5 to be considered and the question to be answered is whether or not the work done by the foreman was for purposes of instruction. There was no lay-off of employees so that qualifying condition is of no consequence.

On the days in question the Company was running a special order of "J" grade lumber for the Japanese market. Evidence shows that it was important to produce lumber that met the prescribed standards. Evidence also shows that on March 28, 29 and 30 one grader, Keith MacDonald, was absent on vacation. Gurmail Bassi who was a grader trainee was placed on the dry chain to work with the "J" grade production. At that time he had obtained a C.O.F.I. grading ticket and had successfully completed the Company's "100 board test". This test, when successfully completed, allowed the trainee to receive further training which would lead to the Company recognizing him as a qualified Company grader. Mr. Bassi was qualified on May 2, 1988.

It is the Company's submission that in the absence of Keith MacDonald,

Robert Blair decided to work with Mr. Bassi and give him training on the grading of "J" grade. He had not been the recipient of that training or individual instruction to that date.

There is some difference in evidence as to what constituted a normal grading crew complement when "J" grade was being pulled. Union witnesses said it was four graders plus a puller on the dry chain and from time to time there was another person on the dry chain to help when difficulties occurred. Mr. Nurnal Kaila said that it was a qualified person at each of the four grading stations and most of the time there was a puller on the dry chain with additional help being provided as required. Mr. Bray said that the budgeted complement was one grader at each of the four stations and a clean up person on the dry chain when required. The grievors, Jarnail Kaila and Jagtar Deol gave testimony saying that on the subject days they were employed on the opposite shift, ("B") shift, and a grader and a puller were utilized at #4 station and the dry chain when "J" grade was produced. Company Counsel established through cross examination that neither witness could identify by name the person other than the grader. However, no evidence was produced that showed the number of people on "B" shift was different than the grievor's testimony stated.

I find that during the early stages of "J" grade production the number of people used in the grading function was four graders plus a puller on each shift. It was stated by Union witnesses and by Foreman Kaila that another person could be used if required. No specific times were cited. While there may have been deviations from this complement, I believe that the words of Foreman Kaila were accurate when he said those were the numbers "most of the time".

Gurmail Bassi testified that Robert Blair was present at the grading station at all times on the subject days except when the planer was down. Evidence shows that Foreman Kaila was taking some time off and in addition to Mr. Blair's regular responsibility for quality control he was acting as Relief Foreman. It would not be reasonable for me to accept Mr. Bassi's evidence when there is a greater possibility that Robert Blair would be required elsewhere at least once in three days. Whether that requirement would be a call of nature or a Mill requirement matters not. Mr. Bassi's evidence was so confining that I do not accept it. Mr. Bassi also testified that he was not a qualified grader and therefore could not tell which boards were economy

were not. At that time he had a C.O.F.I. grading ticket and had passed the initial Company test. Foreman Kaila said the difference between the two grades was as recognizable as the difference between a dollar bill and a dime and Mr. Blair described the difference as garbage and gold. Mr. Bassi overstated his position in this segment of his testimony. He had not been instructed in the requirements for "J" grade and if he had fashioned his testimony in that way it would have been believable.

Mr. Bhullar gave evidence that Mr. Blair was at the #4 station seven of eight hours on the first and second days and the same proportion of time on the third day. He admitted that he could not see Mr. Blair at all times and yet he made a positive statement as to the time Robert Blair was present. Mr. Bhullar was wrong when he said he knew those precise times. He could not have been certain that Mr. Blair's presence was for six and a half hours, seven and a half hours or some other length of time. However, after coming to that conclusion I accept as fact that Mr. Bhullar did observe Mr. Blair at and around the #4 station for a considerable length of time on each day. It was that observation that led to the present grievance and arbitration. Mr. Blair was asked how much time he had spent in that work area and he replied "not more than half of the time". Even if I ignore the testimony of Mr. Bassi and Mr. Bhullar and utilize Mr. Blair's testimony I must conclude that he was at that station somewhere near eleven hours during the three subject days. There is no contractual prohibition in "Article XVI, Section 5: Working Foreman" that dictates where a foreman can or can not be, that article and section does dictate what work he can and can not do.

Mr. Blair testified that he had done work normally done by a grader and considered in so doing he was providing instruction to Mr. Bassi. He further said that he had not considered there was any significance to him doing the work until the complaint was lodged. When he was asked if he was aware of Article XVI, Section 5 of the Collective Agreement he replied, "I don't keep my head in the Contract so didn't consider it". He was then asked if he had read the Article and Section after the complaint was made. He answered by saying, "I suppose so".

By Mr. Blair's own testimony he worked with Mr. Bassi, in the absence of the regular grader, and carried out functions that the grader would normally do. This is a breach of the Collective Agreement unless the work which was done was for the purpose of instruction. He also said that he had not considered Article XVI, Section 5

until the complaint was made. Therefore he could not have made his decision to work with Mr. Bassi on the basis of the content of that Article and Section. It is probable that his knowledge of grader training which requires some "hands on" demonstration by the trainer who is sometimes the foreman led him to believe he could give Gurmail Bassi some instruction by example while filling in for the absent grader.

There was a component of instruction in the work that was done but because of the absence of the grader the work that was done exceeded that which was purely instructional. It must be noted that work was done during three successive shifts and for considerable time on each of those shifts. This is more than can be countenanced within the terms of the Collective Agreement.

Question 1 is: Did the Company breach Article XVI, Section 5 of the Collective Agreement between the Company and the Union on March 28, 29 and 30, 1988?

The answer to Question 1 is "Yes".

Question 2 is: If the answer to Question 1 is "yes" what is the appropriate remedy?

Earlier in the award I said that "Article XVI, Section 5: Working Foreman", is an important clause to both employers and employees. Through the years in the Forest Industry of British Columbia many disputes have arisen because foremen had worked or were perceived to have worked. The above cited Article and Section has been negotiated so that the parties understand the bi-lateral tolerances of the work place in the matter. To meet the objectives of this negotiated contractual term both parties must adhere closely to its wording which is clear and without ambiguity. If this is not done a deleterious side effect can be produced. The give and take of the work place can be damaged. In an industrial setting such as a sawmill it is advantageous to all concerned when a foreman occasionally lends a hand to straighten a board or break a jackpot - abuse of Article XVI, Section 5 can lead to controversy and useful assistance can lead to disputes. During this hearing I was pleased to hear Union Counsel say that IWA Local 1-424 recognized that minor assistance from foremen was a normal give and take of the work place.

I do not find that the Company's breach of the Agreement was committed with wilful intent. However, in all the circumstances of this case which include the fact that a special and introductory grade was being produced, it is my opinion that the Company should have used every reasonable effort to find a grader replacement for Keith MacDonald, the vacationing grader. This was not done. If it had been successful in so doing Mr. Blair's activity in the #4 station area could have been for purely instructional purposes.

When Union Counsel suggested that Mr. Bassi could have been put on #1 grading station and the grader moved to #4 Mr. Blair said that could have been done. No evidence was produced to tell the Board that this would have been a feasible resolution.

When the grievors, Jarnail Kaila and Jagtar Deol were asked if they were available for work on March 28, 29 and 30, 1988 they both answered in the affirmative. They were then asked if they had been called to work on "A" shift on those days would they have come. They again answered "yes".

Union Counsel suggested that this Board should fashion a remedy that would declare a breach of the Collective Agreement by the Company. In addition to this he maintained that the grievors should be awarded payment in the amount of pay they would have received if they had been called to work on "A" shift on March 28, 29 and 30, 1988.

As an alternative to that suggestion he said an amount equal to pay for those days could be paid to the Union as damages for the Company's breach of the Agreement. Counsel for the Company has argued that in the event of the Board finding there was a breach of the Agreement no damages should be awarded. She opined that no one had lost any wages as no lay-off was in effect and further that the grievors, Mr. Kaila and Mr. Deol were fully employed on "B" shift.

Both Company and Union Counsel provided me with Briefs of Authority containing a number of cases that contain rulings and opinions that bear resemblances to the case before this Board. I have studied these and find that in the main the matter of awarding damages is very much influenced by the individual circumstances of each

case. My finding regarding damages in this arbitration will be based on the circumstances that existed at the Company's operation on the subject days.

The appropriate remedy is:

The Union is entitled to a declaration and it is so declared that Robert Blair, an employee not covered by the bargaining unit, did work normally done by a member of the bargaining unit, namely that of Grader.

The amount of work performed over a period of two and three quarter shifts exceeds that which can be considered to be solely for purposes of instruction. Article XVI, Section 5: Working Foreman, of the Collective Agreement was thereby breached. I now turn to the matter of damages. The circumstances of this case show that an important shipment of a special grade of lumber was being assembled. It was the decision of the Company to run this special grade on "A" shift in the vacation absence of one grader. The person sent to the affected area was Mr. Bassi who was a grader trainee and therefore not qualified to do the grader's work in total. It is noted that the Company did not grant that qualification until May 2, 1988.

When the Company decided to run the special grade it was necessary for close attention and correct grading to be carried out. This was recognized by the Company through Mr. Blair when he spent considerable time and effort working with and adjacent to Mr. Bassi.

I do not say that a Company must fill all vacant jobs if there are means within the terms of the Contract whereby the needed work is covered. However, in this case it is my opinion that Mr. Bassi was not a person who could do the whole job. A qualified person was needed and the Company should have used every reasonable effort to get one.

The grievors, Jarnail Kaila and Jagtar Deol both testified that they were available for and willing to work in "A" shift on the subject days. The Company did not try to find a replacement qualified grader in Keith MacDonald's stead.

I award damages to Mr. Deol and Mr. Kaila in the following manner:

The Company will compute the amount of money produced by adding together eight hours for March 28, eight hours for March 29 and eight hours for March 30. The product of twenty four hours will be multiplied by the grader's hourly rate for overtime work.

The amount of money produced will be divided in half and each of the grievors will be paid that amount.

I so award and retain jurisdiction in this matter.

Signed this 1 day of ~~October~~^{November}, 1988.


Alex Brokenshire

